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Attorney for Leslie T. Gladstone, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

EBRAHIM KAYMADAR (SSN -8495),

Debtor.

**LODGED**

BANKRUPTCY NO. 03-00094-B7

Date of Hearing: June 7, 2005

Time of Hearing: 2:00 p.m.

Name of Judge: Peter W. Bowie

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON TRUSTEE'S MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS AND INTERESTS

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered (3) through (5) with exhibits, if any, for a total of (5) pages, is granted. Notice of Lodgment Docket Entry No. 98

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DATED: **June 24, 2005**

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

LAW OFFICE OF WILLIAM P. FENNELL

Judge, United States Bankruptcy Court

By: /s/William P. Fennell
Attorney for Leslie T. Gladstone, Chapter 7 Trustee

The hearing on Leslie T. Gladstone, Trustee's ("Trustee"), Motion for Order Authorizing Sale of Real Property Free and Clear of Liens and Interests ("Motion") came on for regular hearing on June 7, 2005 at 2:00 p.m. the matter was continued from May 16, 2005, at 10:30 a.m., in Department Four, of the United States Bankruptcy Court, Southern District of California, before the Honorable Peter W. Bowie, Bankruptcy Judge Presiding. On June 7, 2005 appearances were made as follows: William P. Fennell, Esq., of the Law Office of William P. Fennell on behalf of the Trustee, who was also present in the Court; Alex Lareybi, Esq., of Lareybi & Associates on behalf of Debtor, Ebrahim Kaymadar ("Debtor"), Khodadad Sharif, Esq., of Fine & Sharif on behalf of Ashraf Madani wife of the Debtor ("Madani"), both counsel were accompanied by their respective clients. After reviewing the pleadings filed and hearing argument for and against the Motion, the Court took the matter under submission and on June 15, 2005 rendered a written decision, and good cause appearing thereon;

The Court finds as a matter of fact and concludes as a matter of law that:

Findings of Fact

A. Proper, timely, and adequate and sufficient notice of the motion was provided in accordance with sections 102(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 2006 and 6006, and no further or other notice of the motion is required;

B. A reasonable opportunity to object and/or to be heard regarding the relief requested in the motion has been afforded to all interested persons or entities;

C. The sale of the real property located at 7614 Palmilla Drive #56, San Diego, California, San Diego County Assessor's Parcel Number 347-400-04-56 ("Real Property") more particularly described in Exhibit "A" to Edward B. Shapiro and Olga N. Shapiro ("Buyers") for a purchase price of \$470,000.00 is in the best interest of the bankruptcy estate and creditors;

D. The the Residential Purchase Agreement and Joint Escrow Instructions and Counteroffer thereto, copies of which were attached to the Declaration of Leslie T. Gladstone, on file herein in support of the Motion and is incorporated by reference, were the result of arms length negotiations between the Trustee and Buyers;

E. The sale price of \$470,000 for the Real Property represents the best price obtainable under the circumstances of this case;

F. The Real Property is "community property" as used to define property of the estate in section 541(a)(2) as this Real Property was not partitioned as of the date of debtor's petition, and therefore not legally divided as of the commencement of this case;

G. On December 10, 2003, Madani executed and recorded a Quit Claim Deed granting her interest in the Real

Property to the Debtor, therefore Madani had no interest in the Real Property as of the time of the Trustee's Motion and thus Madani has no standing to oppose the Trustee's Motion.

Conclusions of Law

A. The court has jurisdiction over this Chapter 7 case, the Debtor and the Real Property of the Debtor's estate under 28 U.S.C. §§ 1334 and 157. The Motion concerns the administration of the Debtor's estate, approval of the sale of the Real Property of the Debtor's estate, and proceedings affecting the liquidation of the assets of the Debtor's estate and is, therefore, a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (M), (N) and (O).

B. All requirements of Bankruptcy Code § 363(b) and (f) and any other applicable law relating to the sale of the Real Property contemplated by the Residential Purchase Agreement and Joint Escrow Instructions and Counteroffer thereto, copies of which were attached to the Declaration of Leslie T. Gladstone, on file herein in support of the Motion and is incorporated by reference, and noticed in the Motion have been satisfied.

C. As it relates to the opposition of the Debtor and Madani, that opposition is overruled the entire interest in and title to the Real Property is property of the bankruptcy estate, and thus can be sold pursuant to 11 U.S.C. §363 free and clear of liens with all liens and encumbrances attaching to net sale proceeds to be paid over to Trustee, all such liens and encumbrances to attach with the same force effect and validity, and in the same priority, and same amount as these creditors have in the Property, pending further order of the court.

D. The transfer of the Real Property by the Trustee to the Buyer is a legal, valid and effective transfer of the said Real Property, and (b) will vest with Buyers all right, title and interest of the Debtor's bankruptcy estate (and the Trustee) in and to the Real Property on the date of Closing free and clear of all interests, liens, claims and encumbrances in the Real Property pursuant to Bankruptcy Code §§ 363(b) and (f).

E. All conclusions of law that are findings of facts shall be deemed to be findings of fact.

EXHIBIT "A"
(LEGAL DESCRIPTION)

A CONDOMINIUM COMPRISED OF:

INTEREST 1:

AN UNDIVIDED ONE-THIRTY-SIXTH (1/36TH) INTEREST IN AND TO LOT 4 OF LAS PALMAS II, MAP NO. 11268, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JUNE 28, 1985.

EXCEPTING THEREFROM LIVING UNITS U-29 THROUGH U-64, AS SHOWN ON THAT CERTAIN CONDOMINIUM PLAN ENTITLED "LAS PALMAS II, PHASE IV", RECORDED MAY 5, 1986 AS FILE NO. 86-175762 AND AMENDED BY DOCUMENT RECORDED JULY 9, 1986 AS FILE NO. 86-283355, BOTH OF OFFICIAL RECORDS AND DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS, RECORDED OCTOBER 18, 1985 AS FILE NO. 85-389209 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY.

ALSO EXCEPTING THEREFROM THE EXCLUSIVE RIGHT TO USE ALL PATIOS AND BALCONIES, AS SHOWN ON SAID CONDOMINIUM PLAN.

INTEREST 2:

UNIT 56, AS SHOWN ON THAT CERTAIN CONDOMINIUM PLAN REFERRED TO IN INTEREST 1 ABOVE.

INTEREST 3:

THE EXCLUSIVE RIGHT TO USE THE CORRESPONDINGLY NUMBERED RESTRICTED COMMON AREA PATIO AND/OR BALCONY APPURTENANT TO INTEREST 2, AS SET FORTH ON THAT CERTAIN CONDOMINIUM PLAN REFERRED TO IN INTEREST 1 ABOVE.

INTEREST 4:

A NONEXCLUSIVE EASEMENT FOR INGRESS, EGRESS, AND RECREATIONAL USE, ON, OVER AND UNDER THE COMMON AREA OF LOTS 1, 2 AND 3, RESPECTIVELY, OF LAS PALMAS II, ACCORDING TO MAP THEREOF NO. 11268, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON JUNE 28, 1985, WHICH EASEMENT IS APPURTENANT TO INTERESTS 1, 2 AND 3 DESCRIBED ABOVE. THIS EASEMENT SHALL BECOME EFFECTIVE UPON RECORDATION OF A DECLARATION OF ANNEXATION DECLARING LOTS 1, 2 AND 3, RESPECTIVELY, TO BE SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREAFTER MADE OR A SEPARATE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS WHICH REQUIRES THE OWNERS OF CONDOMINIUMS LOCATED ON LOTS 1, 2, AND 3, RESPECTIVELY, TO BE MEMBERS OF THE ASSOCIATION, ALL AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREAFTER MADE. THE COMMON AREA PLAN COVERING LOTS 1, 2 AND 3, RESPECTIVELY, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, EXCEPTING THEREFROM ANY RESIDENTIAL BUILDINGS THEREON AND ANY PORTION THEREOF WHICH MAY BE DESIGNATED AS RESTRICTED COMMON AREAS.

INTEREST 5:

A NON-EXCLUSIVE ON AND OVER THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS LOT 5 OF LAS PALMAS II, ACCORDING TO MAP THEREOF NO. 11268, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON JUNE 28, 1985, FOR ACCESS, USE, OCCUPANCY, ENJOYMENT, INGRESS AND EGRESS OF THE AMENITIES LOCATED THEREON, SUBJECT TO THE TERMS AND PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREINAFTER MADE. THIS EASEMENT IS APPURTENANT TO INTERESTS 1 AND 2 DESCRIBED ABOVE. THIS EASEMENT SHALL BECOME EFFECTIVE AS TO LOT 5 AT SUCH TIME AS IT IS CONVEYED OF RECORD TO THE ASSOCIATION. LOT 5 DESCRIBED HEREIN IS FOR THE USE OF OWNERS OF CONDOMINIUMS WHICH ARE SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREINAFTER MADE, AND IS NOT FOR THE USE OF THE GENERAL PUBLIC.